

DOCUMENT RESUME

03884 - [A2834058]

[Protest against Affirmative Determination of Responsibility].
B-190104. September 30, 1977. 2 pp.

Decision re: Ikard Mfg. Co.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Redstone
Arsenal, AL; Trans World Optics, Inc.

Authority: A.S.P.R. 1-905.4(b). 4 C.F.R. 20.2. 54 Comp. Gen. 66.
54 Comp. Gen. 509. B-187737 (1977).

The protester objected to the award of a contract, alleging that the apparent low bidder was not qualified to perform from a financial standpoint. GAO will not review protests concerning affirmative determinations of responsibility on their merits in the absence of allegations of fraud on the part of the procuring activity or other circumstances not present in this case. (Author/SC)

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DECISION



Chris Harris
THE COMPTROLLER GENERAL Pl. 2
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-190104

DATE: September 30, 1977

MATTER OF: Ikard Manufacturing Company

DIGEST:

Protest concerning affirmative determination of responsibility will not be considered on merits.

Ikard Manufacturing Company (Ikard) protests award to any other bidder under invitation for bids (IFB) No. DAAH01-77-B-038, issued by the U.S. Army Materiel Readiness Command, Redstone Arsenal (Army).

Specifically, the protester takes exception to any affirmative determination of responsibility of the apparent lower bidder, Trans World Optics, Inc., on the grounds that the company "is not qualified to perform from a financial standpoint." In support of this contention, Ikard has submitted an April, 1977 tax and credit report concerning the company which was prepared by Dunn & Bradstreet, Inc. Ikard also contends that the Army's procurement methods demonstrate preferential treatment. Ikard states that a May, 1977 contract for the same item was awarded to Trans World Optics and that Ikard was not invited to bid on this contract despite the fact that in January, 1977 Ikard had been awarded a contract for the manufacture of the item and had performed ahead of schedule. In this connection, Ikard also states that while a pre-award survey of Ikard was performed in connection with its contract, a survey was not conducted on Trans World Optics.

As a general rule, we do not consider protests concerning determinations that particular prospective contractors are responsible. Affirmative determinations of responsibility are largely a matter of subjective judgment within the sound discretion of contracting agency officials, who must bear the brunt of any difficulties experienced by reason of a contractor's inability to perform. Therefore, our Office will not review such protests in the absence

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of allegations of fraud on the part of procuring officials or other circumstances not alleged to apply here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64 and Yardney Electric Company, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. Accordingly, the protester's objection to the affirmative determination of responsibility will not be considered. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289.

With respect to Ikard's allegation of a pattern of preferential treatment, we note that there is no requirement that pre-award surveys be conducted in every case. Armed Services Procurement Regulation § 1-905.4(b) (1976 ed.). In any event, it does not appear that Ikard's letter of September 7, 1977, is intended as a protest of the May, 1977 contract award or that any such protest would be timely at this time. Cf. 4 C.F.R. 20.2(1977).

Accordingly, the protest is dismissed.

Sheldon J. Dembling
for Paul G. Dembling
General Counsel